

EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

NICHOLAS SCHMIDT, as Personal
Representative of the ESTATE OF
JACK OLSON SCHMIDT, deceased,

20-000099-NI

Plaintiff,

CASE NO.: 20- -NI
HON.

VS.

BRYAN SCOTT BUTLER,
UPS GROUND FREIGHT, INC., and/or
UNITED PARCEL SERVICE, INC.,

JUDGE CAROL KUHNKE

Defendants.

EDMUND O. BATTERSBY (P35660)
THE SAM BERNSTEIN LAW FIRM, PLLC
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There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this Court.

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COMPLAINT

NOW COMES the Plaintiff NICHOLAS SCHMIDT, as Personal Representative of the ESTATE OF JACK OLSON SCHMIDT, deceased, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM by EDMUND O. BATTERSBY, and for his cause of action against

the above-named Defendants, respectfully shows unto this Honorable Court as follows:

COMMON ALLEGATIONS

1. That at all times relevant hereto Plaintiff's decedent JACK OLSON SCHMIDT was a resident of the City of Chelsea, County of Washtenaw, State of Michigan.
2. That at all times relevant hereto Plaintiff NICHOLAS SCHMIDT is the duly appointed Personal Representative of the Estate of JACK OLSON SCHMIDT, Washtenaw County Probate Court file number 2019-406-DE and is a resident of the City of Ypsilanti, County of Washtenaw, State of Michigan.
3. That Defendant BRYAN SCOTT BUTLER is a resident of the Town of Schererville, County of Lake, State of Indiana.
4. That Defendant UPS GROUND FREIGHT, INC. is a foreign profit corporation doing business and conducting its affairs in the County of Washtenaw, State of Michigan.
5. That Defendant UNITED PARCEL SERVICE, INC. is a foreign profit corporation doing business and conducting its affairs in the County of Washtenaw, State of Michigan.
6. That the amount in controversy in this litigation exceeds the sum of Twenty Five Thousand (\$25,000.00) Dollars exclusive of costs, interest and attorney fees.

COUNT I

NEGLIGENCE CLAIMS AGAINST DEFENDANT, BRYAN SCOTT BUTLER
AND OWNER'S AND VICARIOUS LIABILITY CLAIMS AGAINST
DEFENDANTS UPS GROUND FREIGHT, INC. AND
UNITED PARCEL SERVICE, INC.

7. That Plaintiff hereby incorporates by reference the Common Allegations as if set forth herein paragraph by paragraph, line by line and word for word.
8. That on or about the 16th day of January, 2019 at or about the hour of 2:28 a.m.

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your Plaintiff's decedent JACK OLSON SCHMIDT was the operator of a 2006 Saturn Vue motor vehicle bearing Michigan license plate number DVW5742 which automobile was being driven in a careful and prudent manner in an easterly direction along and upon I-94 at or near ramp 004A in the Township of Lima, County of Washtenaw, State of Michigan.

9. That at the aforementioned place and time, Defendant BRYAN SCOTT BUTLER was the operator of a 2017 freight semi-truck motor vehicle owned by Defendants UPS GROUND FREIGHT, INC., and/or UNITED PARCEL SERVICE, INC bearing an Indiana license plate number 2469695 which motor vehicle was being driven with its knowledge and/or consent by Defendant BRYAN SCOTT BUTLER in a carelessly, recklessly and grossly negligent manner in an easterly direction along and upon I-94 at or near ramp 004A in the Township of Lima, County of Washtenaw, State of Michigan.

10. That Defendant, BRYAN SCOTT BUTLER, did fail to make a proper observation or take heed of poor road and weather conditions when he recklessly, carelessly and negligently closed in on a vehicle ahead of him and attempted to merge into the left lane to pass said vehicle at a great rate of speed causing him to lose control of his vehicle running it off the roadway and into a cable barrier before coming to a stop blocking safe passage on the roadway.

11. That Plaintiff's decedent JACK OLSON SCHMIDT carefully and prudently attempted to avoid Defendant trucker's out of control semi-truck to no avail and collided with Defendant trucker's vehicle causing him multiple massive personal injuries and ultimate wrongful death as hereinafter alleged.

12. That it then and there became and was the duty of Defendant BRYAN SCOTT BUTLER to drive said semi-truck with due care and caution in accordance with the statutes of the State of Michigan and the rules of the common law applicable to the operation of motor

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vehicles, but that notwithstanding said duties, Defendant BRYAN SCOTT BUTLER did breach and violate the same in one or more of the following particulars:

- a. Driving said motor vehicle on the highway at a speed greater than would permit him to bring it to a stop within the assured clear distance ahead, contrary to the provisions of MCL 257.627;
- b. Driving at a highly excessive and unlawful speed;
- c. Failing to drive said motor vehicle on the highway at a careful and prudent speed, not greater than was reasonable and proper, having due regard to the weather, traffic, surface, width, design and configuration of the highway and other conditions then and there existing as required by MCL 257.627;
- d. Failing to pay attention to driving conditions and/or keep a proper or any lookout for traffic while looking at a cellular phone and/or other devices when Defendant trucker knew or should have known that such failure would endanger the life and limb of other persons along and upon said highway;
- e. Driving a motor vehicle on a highway recklessly with gross negligence and with willful or wanton disregard for the safety of others in violation of MCL 257.626 et. seq.
- f. Failing to give audible warning of the approach or presence of said motor vehicle when reasonably necessary to insure its safe operation as required by MCL 257.706;
- g. Failing to have said motor vehicle equipped with brakes adequate to control its movement and stop and hold it as required by MCL 257.705 or in the alternative, failing to use said equipment;
- h. Following another vehicle more closely than is reasonable and prudent having due regard for the speed of the vehicles and traffic upon and the condition of the highway in violation of MCL 257.643;
- i. In failing to keep his motor vehicle under control at all times relevant to this matter;
- j. In otherwise negligently failing to exert that degree of care, caution, diligence and prudence as would be demonstrated by a reasonably prudent person under the same or similar circumstances and in otherwise causing the injuries and damages to your Plaintiff as hereinafter alleged; and

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- k. In other manners as yet unknown to your Plaintiff but which will become known during the course of discovery.

13. That Defendants UPS GROUND FREIGHT, INC., and/or UNITED PARCEL SERVICE, INC are vicariously liable for the negligent acts and/or omissions of Defendant BRYAN SCOTT BUTLER by virtue of the terms of the applicable Owners Liability Statute found at MCL 257.401 et seq. and because said truck driver was in the course and scope of his employment at all times relevant hereto with the owners of said motor vehicle and/or said Defendants.

14. That as a direct and proximate result of the grossly negligent acts and/or omissions on the part of Defendants your Plaintiff's decedent JACK OLSON SCHMIDT was caused to suffer severe, grievous and permanent personal injuries that ultimately caused his death including, but not limited to:

- a. Multiple painful blunt force injuries to and about the head, neck, chest and abdomen including but not limited to rupture of the thoracic aorta, laceration of the heart, skull fractures, fractures and complete transection of the second and twelfth thoracic vertebrae, lacerating of the spleen, liver and colon, bilateral adrenal hemorrhage, hemorrhage of the pancreas, pulmonary contusions and lacerations, multiple rib fractures, pelvic fractures, intracranial neoplasm and sequelae ultimately resulting in death;
- b. Multiple painful injuries to and about the left lower extremities including but not limited to fractures of the left tibia and fibula with traumatic amputation of the left lower leg, fractures of the left humerus, radius and ulna fractures and fractures of the left mandible;
- c. Multiple painful injuries to the head, neck, back and entire spine and sequelae;
- d. Multiple painful injuries to and about the entire musculo-skeletal soft tissue and nerve system and sequelae;
- e. Multiple internal injuries and sequelae;

- f. Any and all other manners of internal and external injuries;
- g. Conscious pain, suffering, discomfort, disability, with extreme physical and emotional suffering and awareness of impending doom;
- h. Loss of the natural enjoyments of life;
- i. Aggravation of pre-existing conditions;
- j. Loss of wages and/or earning capacity; and
- k. Any and all damages allowed for by the Wrongful Death Act found at MCL 600.2922.

WHEREFORE, your Plaintiff NICHOLAS SCHMIDT, as Personal Representative of the ESTATE OF JACK OLSON SCHMIDT, deceased, respectfully prays that this Honorable Court award him damages against BRYAN SCOTT BUTLER in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars to which he is found to be entitled to receive, together with costs, interest and attorney fees.

COUNT II
OWNER'S NEGLIGENT ENTRUSTMENT AGAINST
DEFENDANTS UPS GROUND FREIGHT, INC.
AND/OR UNITED PARCEL SERVICE, INC.

15. That your Plaintiff hereby adopts and incorporates by reference each and every allegation contained in the COMMON ALLEGATIONS and COUNT I of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

16. That on or about the 16th day of January 2019, it was the duty of Defendants UPS GROUND FREIGHT, INC. and/or UNITED PARCEL SERVICE, INC. to exercise due care and caution in the entrustment of its motor vehicle, so as not to entrust the use of such motor vehicle to a driver that such Defendants knew or had reason to know was likely to drive such motor vehicle in a carelessly, recklessly and grossly negligent fashion.

17. That on the aforementioned date, Defendants UPS GROUND FREIGHT, INC.

and/or UNITED PARCEL SERVICE, INC. knew or should have known that Defendant BRYAN SCOTT BUTLER's driving habits and driving record included numerous citations, convictions and suspensions for reckless, careless, negligent driving including speeding and an indifference to the traffic laws.

18. That notwithstanding that said Defendants knew or had reason to know of the poor driving record and habits of Defendant BRYAN SCOTT BUTLER, these Defendant(s) did entrust said motor vehicle to his use and he did drive such motor vehicle in a careless, reckless and grossly negligent fashion as set forth in COUNT I of this Complaint, causing all such injuries, damages, losses and wrongful death to Plaintiff's decedent JACK OLSON SCHMIDT as set forth in COUNT I of this Complaint.

WHEREFORE, Plaintiff NICHOLAS SCHMIDT, as Personal Representative of the ESTATE OF JACK OLSON SCHMIDT, deceased, prays that this Honorable Court award him damages against Defendants UPS GROUND FREIGHT, INC. and/or UNITED PARCEL SERVICE, INC. in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars to which he is found to be entitled to receive, together with costs, interest and attorney fees, interest and attorney fees.

Respectfully submitted,

THE SAM BERNSTEIN LAW FIRM PLLC

/s/ Edmund O. Battersby

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Dated: January 21, 2020

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